



# Texas General Land Office-Disaster Recovery

## POLICY NOTICE

Subject: Round 2 Multifamily Rental Program

Purpose: Change in GLO Policy Regarding Applicable  
Accessibility Design and Construction Standards

Effective Date: June 2, 2014 (revised November 3, 2014)

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The Texas General Land Office (“GLO”) hereby informs all interested persons of the following policy change in the implementation and administration of its Round 2 Hurricane Ike/Dolly Community Development Block Grant Disaster Recovery (“CDBG-DR”) Multifamily Rental Program (“the Program”).

### Background

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2013), requires that Program projects and activities be readily accessible to and usable by persons with disabilities. Heretofore the Program has considered, pursuant to 24 C.F.R. § 8.32(a) (2013), that compliance with the Uniform Federal Accessibility Standards (“ the UFAS”) in the design, construction or alteration of Program-funded multifamily housing projects satisfies applicable Section 504 requirements.

### New Standards

Effectively immediately, however, the Program adopts new multifamily housing project accessibility design and construction standards: the 2010 ADA Standards for Accessible Design, promulgated by the United States Department of Justice, found at 28 C.F.R. § 35.151 (2013) and 36 C.F.R. Part 1191, App. B and D (2013) (“the 2010 ADA Standards”). Program projects governed by the 2010 ADA Standards need no longer comply with the UFAS, except in the respects noted below.

This change in policy is intended in part to harmonize Program multifamily housing design, construction and alteration with that conducted in selected United States Department of Housing and Urban Development (“HUD”)-funded programs administered by the Texas Department of Housing and Community Development (“TDHCA”). TDHCA recently changed its governing accessibility standards for these programs from the UFAS to the 2010 ADA Standards, and formalized the change by regulation at 10 Tex. Admin. Code § 1.206 (2014).

Accordingly, all Program multifamily housing projects must hereafter comply with the 2010 ADA Standards where applicable, including those undertaken by private for-profit or non-profit developers, units of local government, or public housing authorities. This requirement applies to the maximum extent feasible to new construction that began after March 12, 2012, and to all non-alteration projects for which an application for Program funding was submitted to GLO after January 1, 2014. New construction projects currently in the preconstruction phase approved under the UFAS must be reviewed and brought into compliance with the 2010 ADA Standards before construction can begin. As noted below, the UFAS, not the 2010 ADA Standards, will continue to govern accessibility issues arising from alteration of existing structures.

### Exceptions to the New Standards

HUD has now issued “Instructions” allowing its funding recipients to satisfy section 504 requirements through compliance with the 2010 ADA Standards rather than the UFAS. *See* United States Department of Housing and Urban Development, *Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities*, 79 Fed. Reg. 29671 (May 23, 2014) (“the Accessibility Standards Instructions”). In certain respects, however, the Accessibility Standards Instructions conclude that application of the 2010 ADA Standards would provide less accessibility than the UFAS, or conflict with existing HUD definitions or regulatory requirements. *See* 79 Fed. Reg. at 29673-29676. In these exceptional circumstances, HUD directs that the 2010 ADA Standards should not be employed, and that currently-applicable provisions of the UFAS or existing regulatory requirements should remain in effect.

GLO’s adoption of the 2010 ADA Standards consequently explicitly excludes the exceptions identified in the Accessibility Standards Instructions. These exceptions are listed in the Appendix thereto and discussed in detail in a section thereof entitled “Utilizing the 2010 Standards.” GLO hereby also adopts this Appendix and discussion. Interested persons should consult the Accessibility Standards Instructions for further information on the nature and extent of Program 2010 ADA Standards applicability exceptions, which are named here for purposes of notice and convenience:

- Scoping for Residential Dwelling Units
- Structural Impracticability-28 C.F.R. § 33.151
- Alterations-28 C.F.R. § 35.151
- Additions-Section 202.2 of the 2010 ADA Standards
- Alterations Affecting Primary Function Areas-Exception to Section 202.4 of the 2010 ADA Standards
- Common Use Areas in Residential Facilities-Section 203.8 of the 2010 ADA Standards
- Employee Work Areas-Section 203.9 of the 2010 ADA Standards, and Similar Sections
- Vehicular Route Exceptions-Sections 206.2.1 and 206.2.2 of the 2010 ADA Standards
- Elevator Exception 1-Section 206.2.3 of the 2010 ADA Standards
- Washing Machines and Clothes Dryers-Sections 214.2 and 214.3 of the 2010 ADA Standards
- Visible Alarms-Exception to Section 215.1 of the 2010 ADA Standards

## Conclusion

In light of the foregoing, Attachment C, Part A, section VIII.B of the Community Development Block Grant Disaster Recovery Program Hurricanes Ike and Dolly Round 2 Housing Guidelines is hereby amended to delete reference to the accessibility standards found at 24 C.F.R. Part 8, and insert in its place reference to the 2010 ADA Standards as elaborated in this Policy Notice. In due course, GLO will amend its Multifamily Inspection Checklist to reflect the change of accessibility standards noted herein.

Interested persons who have comments or questions about this Policy Notice may contact their Grant Managers, or the following responsible GLO manager:

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